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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,577	03/15/2004	Marc Tillis	LL11.12-0103	1712

54704 7590 10/04/2007  
LAW OFFICE OF PHILLIP F. FOX  
10985 40TH PLACE NORTH  
PLYMOUTH, MN 55441

EXAMINER
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WEIER, ANTHONY J

ART UNIT	PAPER NUMBER
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1761

MAIL DATE	DELIVERY MODE
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10/04/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/800,577

**Applicant(s)**

TILLIS, MARC

**Examiner**

Anthony Weier

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) 7, 8, 14-16, and 44-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 9-13, 17-43 and 53-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Applicant's election without traverse of claims 1-6, 9-13, 17-43, and 53-68 (generic and species claims included) in the reply filed on 7/16/07 is acknowledged.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 9-11, 17, 18, 53-56, 59-64, 67, and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Frattinger et al.

Frattinger et al discloses a product comprising an egg-based substance (liquid whole eggs; 8.85%) with a water absorbing thickener (e.g. flour which is comprised of particles) wherein a secondary ingredient including, for example, raisins may be mixed in. Due to the thick nature of the cookie dough, it is expected that said secondary ingredients would remain distributed until baking of the dough. It is expected that the flour would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbance is modest. It should be noted that the mixture further includes a stabilizing agent of starch by way of the flour or in the alternative of gelatin (as in Example

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1), the use of gums which inherently provide freeze-thaw stability (e.g. 1.25% of the dough; col. 1, lines 43-52). Upon cooking of the dough, the egg component will coagulate.

4. Claims 22-26, 28, and 53-55 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 63-216455 (JP '455).

JP '455 discloses a process of preparing a food wherein an egg solution is blended with a cooked water-absorbent material (bread crumbs) wherein same is heated and coagulated. It is expected that the bread crumbs would possess the particular absorbing ability as set forth, for example, in claim 26 as such degree of absorbance is modest.

5. Claims 1-6, 9-13, 17, 18, 22-26, 28, 29, 33-38, 41, 43, 53-56, 59-64, 67, and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 2001-45959 (JP '459).

JP '959 discloses a food comprising whole eggs (inherently fluid and flowable) which are mixed with a water absorbent thickener (i.e. bread crumb; e.g. 20%), wheat flour (including starch which would inherently provide stabilizing), water (or, in the alternative, milk), and then pieces of supplemental food such as fruit, chocolates, raspberry puree which are also mixed homogeneously throughout the food wherein the mixed ingredients are then baked. It is expected that the bread crumbs would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbance is modest. The egg material will coagulate during baking and it is expected that due to the presence of the starch therein that said product would exhibit some freeze/thaw stability.

6. Claims 1-6, 9-11, 17, 18, 22-26, 28, 29, 32-34, 53-56, 59-64, 67, and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 402069166 (JP '166).

JP '166 discloses a food wherein eggs (inherently fluid and flowable) and bread crumbs (water-absorbent thickener) are combined and then blended with vegetables, meat, fish, and shellfish and

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subsequently baked. Said food also includes starch, a stabilizing agent, via the wheat flour also present during baking. It is expected that the bread crumbs would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbance is modest. The egg material will coagulate during baking and it is expected that due to the presence of the starch therein that said product would exhibit some freeze/thaw stability.

7. Claims 1-6, 10, 11, 17, 19, 20, 22-26, 28, 30-34, 53-55, and 57-60 are rejected under 35 U.S.C. 102(e) as being anticipated by Pfeiffer.

Pfeiffer discloses a food wherein an beaten eggs (inherently fluid and flowable), comminuted bread (i.e. water-absorbent thickener and employed in less than 25% of the total weight, see paragraph 25), and pieces of a supplemental food (bacon, pork, etc.) which are mixed together and formed into a patty wherein it is expected that the comminuted bread would aid in binding and maintaining the distribution of pieces of the supplemental food throughout the food. It is expected that the bread ingredient would possess the particular absorbing ability as set forth, for example, in claim 10 as such degree of absorbance is modest. Upon cooking of the food, the egg component will coagulate. In addition, Pfeiffer discloses breading the food product and frying same (e.g. paragraph 12).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 27 is are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 402069166 (as applied in paragraph 6) or JP 2001-45959 (as applied in paragraph 5).

The claims further call for the particular amount of stabilizer and water-absorbent thickener used. However, such determination would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been further obvious to have arrived at such amounts through routine experimental optimization.

10. Claims 12, 13, 35-37, and 39-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pfeiffer (as applied in paragraph 7) taken together with AllRecipe.

The claims further call for the inclusion of a liquid dairy component. However, it is well known to include milk and a few other different ingredients in the preparation of egg and pork containing patties as taught, for example, by AllRecipe to provide a patty with an added twist (i.e. sweet and sour pour patties). Absent a showing of unexpected results, it would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the patty of Pfeiffer to include other ingredients, including milk, to give such alternative patty product as a matter of preference.

11. Claims 9, 18, 21, 27, 29, 38, 56, and 61-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied in either one of paragraphs 7 or 10 and further in view of Ullrich et al.

The claims further call for the presence of a stabilizing agent that imparts freeze-thaw stability to the food product. Ullrich et al teaches egg containing patties having freeze-thaw stability due to the presence of, for example, xanthan gum (paragraph 17). It would have been obvious to one having ordinary skill in the art at the time of the invention to have included such stabilizing agent in the product of Pfeiffer to impart a freeze-thaw stability to same.

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The claims further call for the particular amount of ingredients used. However, such determination would have been well within the purview of a skilled artisan, and, absent a showing of unexpected results, it would have been further obvious to have arrived at such amounts through routine experimental optimization.

*Prior Art*

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Weier whose telephone number is 571-272-1409. The examiner can normally be reached on Tuesday-Friday.

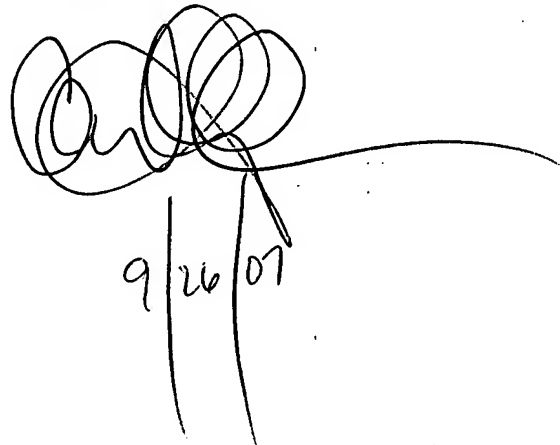
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Anthony Weier  
Primary Examiner  
Art Unit 1761

Anthony Weier  
September 26, 2007



9/26/07